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8
9 **BEFORE THE**
CALIFORNIA BOARD OF OCCUPATIONAL THERAPY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

OT2007-205

12 REBECCA LEE SCHMIDT
13 3711 Halfbeak Way
14 San Diego, CA 92124

ACCUSATION

15 Occupational Therapy License No. OT 8291

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Heather Martin (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Occupational Therapy, Department of Consumer
22 Affairs.

23 2. On or about June 21, 2005, the California Board of Occupational Therapy issued
24 Occupational Therapy License Number OT 8291 to Rebecca Lee Schmidt (Respondent). The
25 Occupational Therapy License was in full force and effect at all times relevant to the charges
26 brought herein and will expire on July 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the California Board of Occupational Therapy (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2570.28 states in relevant part:

"The board may deny or discipline a licensee for any of the following:

"(a) Unprofessional conduct, including, but not limited to, the following:

"(1) Incompetence or gross negligence in carrying out usual occupational therapy functions.

". . . .

"(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any regulation adopted pursuant to this chapter. . . .

5. Section 118 states in relevant part:

". . . .

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, "board" includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and "license" includes "certificate," "registration," and "permit."

6. Section 2570.3 of the Code states in relevant part:

". . . .

"(d) An occupational therapist may provide advanced practices if the therapist has the knowledge, skill, and ability to do so and has demonstrated to the satisfaction of the board that he

1 or she has met educational training and competency requirements. These advanced practices
2 include the following:

3 "....

4 "(2) The use of physical agent modalities.

5 "....

6 "(f) An occupational therapist using physical agent modalities shall demonstrate to the
7 satisfaction of the board that he or she has completed post professional education and training in
8 all of the following areas:

9 "(1) Anatomy and physiology of muscle, sensory, vascular, and connective tissue in
10 response to the application of physical agent modalities.

11 "(2) Principles of chemistry and physics related to the selected modality.

12 "(3) Physiological, neurophysiological, and electrophysiological changes that occur as a
13 result of the application of a modality.

14 "(4) Guidelines for the preparation of the patient, including education about the process and
15 possible outcomes of treatment.

16 "(5) Safety rules and precautions related to the selected modality.

17 "(6) Methods for documenting immediate and long-term effects of treatment.

18 "(7) Characteristics of the equipment, including safe operation, adjustment, indications of
19 malfunction, and care.

20 "(g) An occupational therapist in the process of achieving the education, training, and
21 competency requirements established by the board for providing hand therapy or using physical
22 agent modalities may practice these techniques under the supervision of an occupational therapist
23 who has already met the requirements established by the board, a physical therapist, or a
24 physician and surgeon. . . ."

25 7. California Code of Regulations, title 16, section 4152 states:

26 "(a) Physical agent modalities may be used only when an occupational therapist has
27 demonstrated to the Board that he or she has met the post professional education and training
28 requirements established by this section as follows:

1 “(1) Education: Completion of 30 contact hours in the subjects listed in Code section
2 2570.3(f).

3 “(2) Training: Completion of 240 hours of supervised on-the-job training, clinical
4 internship or affiliation, which may be paid or voluntary, pertaining to physical agent modalities.

5 “(b) An occupational therapist may use only those physical agent modalities he or she is
6 competent to use.”

7 8. California Code of Regulations, title 16, section 4155 provides in relevant part:

8 “In order to provide any of the advanced practice services set forth in Code section
9 2570.3(d), an occupational therapist shall apply to the Board and receive approval in that
10 advanced practice area. . . .”

11 9. California Code of Regulations, title 16, section 4170 provides in relevant part:

12 “A violation of any ethical standard of practice constitutes grounds for disciplinary action.
13 Every person who holds a license, certificate or limited permit issued by the board shall comply
14 with the following ethical standards of practice:

15 “....

16 “(b) Occupational therapy practitioners shall take reasonable precautions to avoid imposing
17 or inflicting harm upon the client or to his or her property.

18 “....

19 “(d) Occupational therapy practitioners shall perform occupational therapy services only
20 when they are qualified by education, training, and experience to do so.

21 “(1) Occupational therapy practitioners shall hold the appropriate credentials for the
22 services they provide.

23 “(2) Occupational therapy practitioners shall refer to or consult with other service providers
24 whenever such a referral or consultation is necessary for the care of the client. Such referral or
25 consultation should be done in collaboration with the client.”

26 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request
27 the administrative law judge to direct a licensee found to have committed a violation or
28

1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 FIRST CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct - Gross Negligence or Incompetence)

5 11. Respondent is subject to disciplinary action for unprofessional conduct under section
6 2570.28(a)(1) in that she was grossly negligent or incompetent. The circumstances are that on or
7 about December 4, 2007, Respondent provided a treatment to a quadriplegic patient utilizing a
8 moist hot pack which resulted in a first and second-degree burn 6 X 7 cm in size. The
9 circumstances are as follows:

- 10 a. Respondent failed to evaluate the sensory loss in a patient with a spinal cord injury;
- 11 b. The use of the heat pack was not covered by a physician's order.
- 12 c. Respondent failed to include the use of modalities in her treatment plan for the
13 patient;
- 14 d. The use of a heat pack is contra-indicated for use on patients who lack sensation such
15 as in a spinal cord injury at the C5-C7 level where the hot pack was applied.
- 16 e. Respondent failed to put enough layers of toweling to prevent a burn as identified in
17 the facility policy and procedure where the treatment took place.
- 18 f. Respondent was not aware of the facility's policy or procedure for use of a hot pack.
- 19 g. Respondent failed to check the patient's skin for possible burns.
- 20 h. Respondent observed the patient tilt his wheelchair back so his weight was on the hot
21 pack which increased the transference of heat to the patient's skin which increased the risk of
22 burn.

23 SECOND CAUSE FOR DISCIPLINE

24 (Unethical Practice – Inflicting Injury to a Client)

25 12. Respondent is subject to disciplinary action for unethical practice under section
26 2570.28(c) for violation of California Code of Regulation, title 16, section 4170(b) by injuring a
27 client as set forth in paragraph 11 incorporated herein.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct - Use of Physical Agent Modalities Without Post Professional
3 Education, Training, or Certification)

4 13. Respondent is subject to disciplinary action for unprofessional conduct under Code
5 sections 2570.28(c), 2570.3(d)(2), 2570.3(f), 2570.3(g), and California Code of Regulations, title
6 16, sections 4152, 4155 and 4170(d)(1)(2) in that she used a physical agent modality on a client
7 without the necessary post professional education, training or certification as set forth in
8 paragraph 11 incorporated herein.
9

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the California Board of Occupational Therapy issue a decision:

- 13 1. Revoking or suspending Occupational Therapy License Number OT 8291, issued to
14 Rebecca Lee Schmidt;
15
16 2. Ordering Rebecca Lee Schmidt to pay the California Board of Occupational Therapy
17 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and
18 Professions Code section 125.3;
19 3. Taking such other and further action as deemed necessary and proper.

20 DATED: May 26, 2009

Heather Martin
21 HEATHER MARTIN
22 Executive Officer
23 California Board of Occupational Therapy
24 Department of Consumer Affairs
25 State of California
26 Complainant
27
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SD2009803912